

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE WASHINGTON TRUST COMPANY,

Petitioner,

vs.

EDWARD H. CHAVELLE, as Trustee of the Estate of WASHINGTON STEEL & BOLT COMPANY, a Corporation, Bankrupt,

Respondent.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, of Certain Orders of the United States District Court for the Western District of Washington, Northern Division.

Filed

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F. D. Monckton,
Clerk.

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INDEX TO THE PRINTED TRANSCRIPT OF
RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States Circuit Court of Appeals, Ninth
District*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

Petition for Supervision and Revision.

To the Honorable Judges of the Circuit Court of
Appeals of the Ninth District:

Your petitioner, the Washington Trust Company, feeling itself aggrieved by the orders, judgments and proceedings hereinafter referred to and described, hereby petitions the Court to superintend and revise the said orders and judgments, and in that connection and to that end your petitioner respectfully shows as follows:

I.

That it resides at Spokane in Spokane County, State of Washington, and in the above-entitled district, and is a creditor of the Washington Steel & Bolt Company, a corporation, the above-entitled bankrupt, who was adjudged a bankrupt by the District Court of the United States for the Western District of Washington, Northern Division, on the 19th day of September, 1911.

II.

That after such adjudication the following proceedings were had in the case of the said bankrupt, which have resulted prejudicial, as your petitioner verily believes, to the legal rights and remedies of your petitioner:

a. That heretofore, to wit, during the month of May, 1912, Edward H. Chavelle, as trustee of the estate of the above-entitled bankrupt, filed a petition before the Honorable John P. Hoyt, the Referee, to which the above-entitled matter had been duly and [1*] regularly referred by the said District Court, wherein the said trustee sought to have all the property of the said bankrupt sold for cash, free and clear of encumbrances.

b. That a notice and citation was issued to your petitioner to appear, and show cause why the said property should not be sold.

c. That in answer to said notice your petitioner, on the third day of June, 1912, filed an Answer thereto, which Answer contained also a cross-petition setting forth the facts that on September 1, 1908, the said bankrupt, the Washington Steel & Bolt Company, while it was engaged in the transaction of its own business and four months prior to the decree or order adjudging it a bankrupt, made, executed and delivered to your petitioner a trust deed, securing bonds to be issued in the sum of Two Hundred Thousand Dollars (\$200,000.00), which deed covered all the property of the Washington Steel & Bolt Company and was recorded in Volume 69 of Mortgages, at page 388, Record of Mortgages of Snohomish County, Washington, that being the county in which the property of the said Washington Steel & Bolt Company was situated, and that the said mortgage was duly filed as a chattel mortgage, and that the bonds to the amount of \$53,100.00 had been

*Page-number appearing at foot of page of original certified Record.

negotiated by the said Washington Steel & Bolt Company, and were outstanding, and that in compliance with the provisions of said mortgage the holders of said bonds requested your petitioner to foreclose the mortgage and take such steps as might be necessary to protect their interests in the premises, and prayed that the petition of the said Trustee in Bankruptcy be denied and that it, your petitioner herein, be granted an order authorizing and empowering it to foreclose this mortgage upon the real and personal property belonging to said bankrupt, and that the cross-petition of the Washington Trust Company was amended to fix the date of the execution of the said mortgage as the 9th day of September to correspond with the date of the acknowledgment appearing thereon. [2]

d. This answer and cross-petition was afterwards, to wit, on August 14, 1912, supplemented by another petition, substantially in the form of the former petition, asking leave to foreclose said mortgage, to which answer and cross-petition and petition the Trustee in Bankruptcy answered, denying certain allegations therein and alleging that no bonds were regularly issued by the said Washington Steel & Bolt Company, as provided in said trust deed, and that all the bonds issued by the Washington Steel & Bolt Company in connection with said deed and trust were fraudulent and void, and prayed that the prayer of your petitioner be denied to which affirmative matter a reply was filed by your petitioner denying the affirmative matter in said answer.

e. That evidence was taken upon the issues so

joined, and on the 26th day of November, 1912, the Referee rendered a memorandum of decision granting the Washington Trust Company leave to foreclose its mortgage upon paying into bankrupt court the sum of Twelve Hundred Dollars (\$1200.00) to defray the expenses incident to the care of the property and certain charges for the referee and trustee in bankruptcy, and on the 19th day of December, 1912, entered a formal order granting your petitioner leave to foreclose upon the payment of said sum.

f. That your petitioner, feeling itself aggrieved by the said decision and order, had the correctness of said order reviewed by the District Court, and that thereafter, on the third day of March, 1913, the said District Court reversed the ruling of the said Referee and referred the case back for the further taking of testimony upon all questions relative to the scope and validity of the mortgage and the bonds secured thereby and directed that when such questions had been determined the trustee must elect whether he would administer the equity of redemption in the property for the benefit of general creditors provided said mortgage and bonds are held valid, or surrender the mortgaged property to the mortgagee for foreclosure. From this order there was no appeal and [3] the cause was sent back for the taking of testimony pursuant thereto. After taking the testimony on May 15, 1913, the Honorable John P. Hoyt, Referee, rendered a memorandum decision holding that the said trust deed was void, and on June 16, 1913, following, entered a formal

order denying the petition of your petitioner to foreclose upon the ground and for the reason that the said mortgage and bond were null and void.

g. Your petitioner, feeling itself aggrieved by said decision, had the correctness thereof reviewed by the judge of the district court, who, on the 15th day of September, 1913, filed a memorandum decision holding the trust deed valid but referred the cause back to the referee for the taking of further testimony upon the amount due and owing upon the bonds and under date of November 14, 1913, entered a formal order by said judge of the district court, referring the case back pursuant to the tenor of said opinion. Further testimony was taken. Thereafter, on the 20th day of July, 1914, the referee made his Findings of Fact and Conclusions of Law, and on the same day entered an order wherein and whereby it was ordered that the prayer of the petition of your petitioner to foreclose said mortgage be denied, and that the claim of the Washington Trust Company be rejected and disallowed and expunged from the list of claims upon record in this case, and the said referee in bankruptcy, on July 28, 1914, entered an order upon the petition of the trustee in bankruptcy to sell said property authorizing and directing him to sell all the property of the said bankrupt, which property was covered by said mortgage, for cash, free and clear of claims of the said mortgage and the said bonds. Each of said orders was taken to the district judge upon a petition for review. The Honorable Jeremiah Neterer, as District Judge, on the 15th day of September, 1914, rendered a mem-

orandum opinion, in which he held bonds amounting to \$37,000.00 valid and \$25,000.00 invalid, and that the said bonds were secured [4] by the trust deed which was valid, but afterwards modified his decision holding \$10,000 of said bonds valid and the remaining bonds void and confirmed the order of the referee directing that the property be sold for cash by the said trustee, and denying the holders of the bonds, which were declared valid, the right to use their bonds in any manner in bidding at said sale. Exceptions were duly taken to the ruling of the said district judge and certain findings or orders were presented by your petitioner for signing, signing of which was refused by the said judge, and this petition is to review the correctness of the ruling of the said judge upon said matters.

A copy of the order directing a sale of the property free and clear of encumbrances is hereto attached and marked Exhibit "A."

A copy of the memorandum opinion rendered by the said judge is hereto attached and marked Exhibit "B."

A copy of the order pronouncing the invalidity of said bonds is hereto attached and marked Exhibit "C."

A copy of the exceptions made thereto by your petitioner is hereto attached and marked Exhibit "D."

A copy of the decree or order proposed by your petitioner and refused by the said judge, together with his notation as to the exception thereto, is hereto attached and marked Exhibit "E."

A copy of the order of the said honorable judge

confirming the order of the referee for the sale of said property is hereto attached and marked Exhibit "G."

III.

That the ruling of the said Honorable Jeremiah Neterer was erroneous in law and in fact in the following particulars: [5]

a. Said order was erroneous in that it did not adjudge each bond held by the Bank of Montreal valid, and in that it omitted to include in the valid bonds of the Washington Steel & Bolt Company the bonds held by the Bank of Montreal.

b. Said order was erroneous in that it held \$1500.00 of the par value of the bonds held by C. F. Chapin void.

c. Said order was erroneous in that it did not adjudge that all the bonds held by Thomas S. Burley were valid and in omitting from the bonds held valid the bonds held by Thomas S. Burley.

d. The action of the said judge was erroneous in that it did not require the said trustee in bankruptcy to administer upon the equity of redemption in said property for the benefit of general creditors, or to surrender the property for foreclosure.

e. The said judge erred in refusing to incorporate in his order and judgment Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18a and 18b of the order or decree proposed by your petitioner, and each of them.

f. That the said court erred in affirming the order of the referee directing a sale of the said lands and premises for cash.

g. The said order was erroneous in that it provided that a certain portion of the proceeds of the sale of the said property should be applied to the payment of the expenses of the bankruptcy proceedings before the application of any of said funds to the payment of said bonds.

IV.

That the amount involved in the above controversy exceeds the sum of \$2,000.00, and that the par value of said bonds, exclusive of interest, amounts to approximately \$45,000.00. [6]

WHEREFORE, your petitioner, feeling aggrieved because of such orders, and each of them, asks that the same may be reviewed in matters of law by your honorable court, as provided in Section 24-B of the Bankruptcy Law of 1898 and the rules and practice in such case provided.

WASHINGTON TRUST COMPANY,

By JAMES B. MURPHY,

Its Attorney.

JAMES B. MURPHY,

Attorney for Petitioner. [7]

State of Washington,
County of King,—ss.

I, James B. Murphy, being first duly sworn upon oath, deposes and says: That he is the attorney for the petitioner above named, the Washington Trust Company; that the Washington Trust Company has no officer or agent within the County of King, State of Washington, or nearer than Spokane, and that affiant is the agent and attorney of the said Washington Trust Company for the purposes of all

litigation in the above-entitled matter and the prosecution of this petition for review, and that the statement of facts contained in the foregoing petition for review are true according to the best of my knowledge, information and belief.

JAMES B. MURPHY.

Subscribed and sworn to before me this 26 day of October, 1914.

[Seal]

ISRAEL NELSON,
Notary Public in and for the State of Washington,
Residing at Seattle, County and State Aforesaid.

[8]

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

**Exhibit "A" [to Petition for Revision—Order of
Referee Directing Sale of Certain Property,
etc.].**

**ORDER DIRECTING SALE FREE AND CLEAR
OF LIENS.**

An order having been heretofore made herein requiring the Washington Trust Company, and all creditors of the above-named bankrupt, to show cause before this Court, at the office of Hon. John P. Hoyt, Referee, why an order should not be made herein, directing that all the property, now in the possession of said Trustee and mentioned and described in the

petition filed therefor, be sold in the manner prescribed by the acts of Congress relating to bankruptcy and the General Orders of the Supreme Court of the United States, free of and from the lien of the mortgage held by The Washington Trust Company, and free of and from all liens, and why the proceeds arising of and from said sale should not be held by the said Trustee subject to the lien of said mortgage (provided the same was held a valid and subsisting lien), to all intents and purposes as though the said property had not been sold; subject to the final order, judgment and decree of this Court as to the validity, *bona fides* and extent of the said mortgage, and for other and further relief. Now, upon reading and filing the said order to show cause, and upon the petition of Edward H. Chavelle, Trustee, theretofore filed herein; and upon the petition in bankruptcy herein, the testimony taken under said petition and the answer of the said the Washington Trust Company.

And after hearing counsel for the Trustee in favor thereof, and counsel for said The Washington Trust Company in opposition thereto—the creditors of said bankrupt having appeared and urged the granting of the prayer of said petition—and it appearing to the [9] satisfaction of this Court that the best interests of the creditors of the said bankrupt above named will be subserved by the granting of said application, and for divers other reasons that the said application is proper, it is hereby

ORDERED, ADJUDGED and DECREED that Edward H. Chavelle, as Trustee of Washington Steel

& Bolt Company, Bankrupt, be, and he hereby is authorized, directed and permitted to sell and dispose of, in the manner and mode prescribed by the acts of Congress relating to bankruptcy and the General Orders of the Supreme Court of the United States, all of the property of the Washington Steel & Bolt Company, bankrupt, situate and located at Edmonds, Snohomish County, Washington, and more particularly described in a certain indenture of mortgage heretofore made by Washington Steel & Bolt Company to the Washington Trust Company to secure an issue of \$200,000 of bonds, dated September 1, 1908, and recorded on the — day of September, 1908, in Book — of Mortgages at page —, in the office of the Auditor of Snohomish County, Washington.

And it further Ordered, Adjudged, and Decreed that the said Edward H. Chavelle, as Trustee, be, and he hereby is authorized, directed and permitted to sell and dispose of the said property in said mortgage more particularly mentioned and described, free of and from the lien thereof, and that the proceeds arising from the sale of said property be held by the said Trustee subject to the lien of said mortgage, as if said property had not been sold, subject to the final order, judgment and decree of this Court adjudicating the validity, *bona fides* and extent of the said mortgage.

Dated July 28, 1914.

JOHN P. HOYT,
Referee in Bankruptcy. [10]

*United States District Court, Western District of
Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY,

Bankrupt.

**Exhibit "B" [to Petition for Revision—Opinion of
Neterer, D. J., Modifying Order of Referee in
Bankruptcy, etc.].**

Filed Sept. 15, 1914.

ON PETITION TO REVIEW ORDER OF REF-
EREE. ORDER MODIFIED.

JAMES B. MURPHY, for Petitioner.

J. W. RUSSELL, for Trustee.

NETERER, District Judge:

This case has been before the Court on two or three prior occasions, and the last hearing was upon a petition to review the order of the Referee in which he held the mortgage in issue to be invalid. The Court reversed the order of the Referee and held the mortgage valid because it was regularly signed by the Secretary and President of the corporation and authenticated by the corporate seal which was affixed, and its execution was admitted by the trustee. As to the issuance of the bonds, the Court expressed some view of the bonds under the testimony submitted, but said:

"I am unable to determine from the testimony the amount of the bonds that were legally issued."
and remanded the case to the Referee, with instruc-

tions, "*to ascertain the amount and status of all bonds and report to the Court, to the end that all parties may receive equal protection.*"

The testimony has been submitted to the Referee by all contending parties as to the legal status of the bonds. Upon the conclusion of the hearing, the Referee held that none of the bonds had been legally issued; that they were invalid and therefore not claims against the bankrupt estate, and also entered an order directing the property to be sold free and clear of all indebtedness. This order, and the order [11] holding the bonds invalid, are before the Court at this time.

From a consideration of all of the evidence presented, I am of the opinion that the \$23,400.00 of bonds issued to McPhaden, and the \$2,900.00 of bonds issued to Pike, issued for past indebtedness to Pike and McPhaden for monies advanced by them to the corporation long prior to the date of the bonds, and transferred to the Bank of Montreal as collateral security for money paid to the company, are liabilities to the extent of the advances. There were also regularly issued: to C. F. Chapin, \$2,500.00; Meta McElroy, \$2,000.00; J. H. Osborne, \$5,900.00; and Thomas S. Burley, \$2,600.00. The bonds issued to these last-named parties were upon considerations paid by these several parties to McPhaden, who paid that money to the Washington Steel & Bolt Company, which he was representing, and it was used by the company in the regular course of business, and all benefits arising from such payments accrued to the corporation. These several

parties having thus paid their money upon the faith and credit of these bonds and the mortgage, should not now be deprived of the benefits accruing by reason of such security, after the corporation had used their money, some of which, perhaps, now representing some of the assets. The contention that the bonds are void because of the fact that a commission was paid to the person negotiating the bonds cannot be well founded as against the parties who paid ninety-five cents on the dollar, which the testimony shows these several parties did, except as to the bank holding the bonds issued to McPhaden and Pike as collateral security.

The \$25,000.00 bonds issued to the Bank of Montreal as collateral security, I do not think are a valid claim. The bonds were delivered without any authority, either fact [12] or law. There is no testimony before the court that the delivery of these bonds was ever authorized in a legal manner, and if a proper resolution had been passed, the authority under which the bonds were executed did not comprehend the issuance of bonds for any such purpose.

I think the findings and conclusions of the Referee should be modified in so far as they relate to the \$23,400.00 of bonds issued to McPhaden, and the bonds issued to C. F. Chapin, Meta McElroy, J. H. Osborne, Thomas S. Burley and Pike. I think that the property should be sold, and the proceeds applied to the payment of the claims of the Bank of Montreal, to the extent of its interest in the McPhaden and Pike bonds held as collateral, and also the bonds of Chapin, McElroy, Osborne and Burley,

less such proportion of the expenses as should be paid by said interests in this bankruptcy proceeding, and the balance, if any, less expenses of administration, to be distributed among the general creditors, as provided by the Bankruptcy Act.

Let an order be presented.

JEREMIAH NETERER,

Judge. [13]

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

Exhibit "C" [to Petition for Revision—Order Modifying Order of Referee of July 20, 1914, etc.].

**ORDER ON REVIEW FROM ORDER OF
REFEREE.**

This matter having been brought before the referee by the petition of The Washington Trust Company for leave to foreclose a certain mortgage, executed by the bankrupt, outside of the bankruptcy court; and the referee having granted leave to so foreclose upon terms; and the petitioner, The Washington Trust Company, having taken a review from said order; and this court having reversed said order, directed the mortgage, if valid, to be foreclosed in the bankruptcy court, and sent the matter back to the referee to take proofs as to the validity of said mortgage and the bonds issued thereunder;

and proofs having been offered before the referee as to the validity of said mortgage, but not as to the validity of said bonds; and said referee having made and entered an order declaring said mortgage invalid; and the petitioner, The Washington Trust Company, having taken a review from said order to this court; and this court having held said mortgage valid, reversed said order, and sent the matter back to the referee to take proof as to the validity of said bonds, and to make findings and conclusions thereon; and said referee having taken such proofs, and having made findings and conclusions thereon, and having made and entered an order on the 20th day of July, 1914, declaring all of said bonds invalid, and rejecting, disallowing and expunging the claim of the petitioner, the Washington Trust Company, based thereon, from the records; and said petitioner having filed exceptions to said findings and conclusions, and having taken a review from said order to this court; and the matters raised by said review having been heard and considered by this court,

IT IS ORDERED that said report and order of July 20, 1914, be, and the same hereby is, modified to the extent of holding that \$1,000 of the bonds held by C. F. Chapin, and the \$2,000 of bonds held by Meta [14] McElroy, and the \$7,000 of bonds held by J. H. Osborne are valid, and as so modified said order is hereby confirmed.

The trustee in bankruptcy duly excepts to such modification, and his exception is hereby allowed.

And the property covered by said mortgage hav-

ing been ordered sold free and clear from the lien thereof.

IT IS HEREBY FURTHER ORDERED that the proceeds thereof be paid to Washington Trust Co. on account of the claims of said Chapin, McElroy and Osborne, less such proportion of the expenses and costs as should be paid by said interests in this proceeding, and that the balance thereof, if any, less expenses of administration, be distributed among the creditors, as provided by the Act.

Oct. 16, 1914.

JEREMIAH NETERER,

Judge. [15]

*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

No. —.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

**Exhibit "D" [to Petition for Revision—Exceptions
of Washington Trust Co. to Approval of Find-
ings and Report of Referee].**

Filed Oct. 16, 1914.

COMES NOW the Washington Trust Company, by its Attorney, the undersigned, at the time of the signing of the Order by the above-entitled Court, passing upon the Petition of said Washington Trust Company, reviewing the Findings and Report of the Referee in this matter, which Findings and Report

were made by the Referee on July 20, 1914, and excepts to the Court's ruling as follows:

I.

The Washington Trust Company excepts to the Court's refusal to sustain its exception and objection made to Finding I of said Referee.

II.

The Washington Trust Company excepts to the refusal of the Court to sustain its exception to Finding V of said Referee and the whole and every part thereof.

III.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exceptions and objections to Finding VI of the Referee.

IV.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exceptions and objection to Finding VII made by said Referee.
[16]

V.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding VIII made by said Referee.

VI.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding IX made by said Referee.

VII.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XI made by said Referee.

VIII.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XII made by said Referee.

IX.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XIII made by said Referee.

X.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XIV made by said Referee.

XI.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XV made by said Referee.

XII.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XVI made by said Referee. [17]

XIII.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XVII made by said Referee.

XIV.

The Washington Trust Company excepts to the refusal of the Court to sustain each and every exception and objection made and contained in the Petition of the Washington Trust Company for the review of the Report of the Referee made on July 20, 1914, and the order of the Referee during the sale

of the property made by said Referee on July 28, 1914.

XV.

The Washington Trust Company excepts to the whole and every part of the order entered by the above-entitled court on the 16th day of October, 1914, and specifically to that part of said order wherein and whereby the Court confirms the report and order of the said Referee, which it reviewed, except as in said order modified.

XVI.

The said Washington Trust Company further excepts to that part of the order directing the proceeds of the sale to be applied upon the claims of Chapin, McElroy and Osborne, omitting any claims which the Washington Trust Company may have for its services as trustee, and its costs and commissions and expenses in the prosecution in the above-entitled action.

XVII.

The said Washington Trust Company excepts to that portion of said decree subjecting the proceeds of the sale of said property to a portion of the expenses and costs of the said bankruptcy proceedings and excepts to every part of said order directing the sale of the said property. [18]

XVIII.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion I made by said Referee.

XIX.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion II made by said Referee.

XX.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion III made by said Referee.

XXI.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion IV made by said Referee.

XXII.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion V made by said Referee.

XXIII.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion VI made by said Referee.

XXIV.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion VII made by said Referee.

JAMES B. MURPHY,

Attorney for Washington Trust Company. [19]

The foregoing exceptions were, at the time of the signing of the Order herein, considered by the Court, and said exceptions were allowed.

Oct. 16, 1914.

JEREMIAH NETERER,

Judge. [20]

*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

No. —.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

**Exhibit "E" [to Petition for Revision—Form of
Decree Proposed by Washington Trust Co., and
Refusal of Court to Sign Proposed Decree, etc.].**

THE WASHINGTON TRUST COMPANY requests the incorporation in the Order of the Court, each (severally), of the following provisions:

This matter having been presented to this Court, upon the petition to review the Findings and Conclusions and Judgment of the Referee in passing upon the validity of the bonds issued by the Washington Steel & Bolt Company, which judgment was entered by the Referee on July 20, 1914, and upon petition for the review of the Order of the Referee on July 28, 1914, made herein, directing a sale of the mortgaged property for cash, free and clear of the encumbrance of said mortgage, and the Court having duly considered the said petitions and the arguments

made in support thereof, and becoming fully advised in the premises; Now, therefore,

1. IT IS HEREBY ORDERED, ADJUDGED and DECREED that the said Findings made by the Referee herein, and the whole of said Findings, as well as the Conclusions deduced therefrom, be and the same are overruled, vacated and set aside, and

2. IT IS FURTHER ORDERED, ADJUDGED and DECREED that said Order and Judgment, and the whole thereof, entered herein by the said Referee, holding that the bonds issued by the above Bankrupt were void and of no effect, and denying the prayer of the Washington Trust Company, and holding that the claim of the Washington Trust Company be rejected and disallowed and expunged from the list [21] of claims, which order was entered on July 20, 1914, be and the same is hereby vacated and set aside, and

3. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the order entered herein on July 28, 1914, by the said referee directing and ordering a sale of the property of the Washington Steel & Bolt Company for cash, free and clear of the encumbrance of said mortgage, be and the same is hereby overruled and set aside.

4. IT IS FURTHER ORDERED, ADJUDGED and DECREED that those certain bonds filed as exhibits herein on behalf of the Bank of Montreal and numbered 661 and 663, 667 to 671, each inclusive; 674 to 690, each inclusive; 695 and 699, being twenty-six (26) bonds of the denomination of \$500.00 each and of the total par value of \$13,000.00; bonds num-

bered 702 and 704, being two bonds of the denomination of \$1,000.00 each, making a total par value of \$2,000.00; bonds numbered 291 to 300, each inclusive, being ten bonds of the denomination of \$100.00 each, making a total par value of \$1000.00; bonds numbered 399 to 407, each inclusive, being nine bonds of the denomination of \$100.00 each, making a total par value of \$900.00; bonds numbered 691 to 694, each inclusive, being four bonds of the denomination of \$500.00 each, making a total par value of \$2,000.00; bonds numbered 665, 666, 672, 673, being four bonds of the denomination of \$500.00 each, making a total of \$2,000.00; bonds numbered 703 and 707, being two bonds of the denomination of \$1000.00 each, making a total par value of \$2,000.00, all of which bonds are held by the Bank of Montreal and are of the total par value of \$22,900.00, are, as to the Bank of Montreal, valid and existing obligations of the Washington Steel & Bolt Company, and secured by the trust deed hereinafter described to the extent of the money due from the Washington Steel & Bolt Company to the Bank of Montreal, a corporation.

[22]

5. IT IS FURTHER ORDERED, ADJUDGED and DECREED, for the apportionment and distribution of the property or proceeds of the sale hereinafter provided for as between the holders of bonds, that the bonds held by the Bank of Montreal represent an indebtedness, including interest, of \$31,012.66.

6. IT IS FURTHER ORDERED, ADJUDGED and DECREED that those certain bonds in the possession of the Bank of Montreal issued by the Wash-

ington Steel & Bolt Company and numbered 705, 708 to 716, each inclusive, and 718 to 732, each inclusive, making 25 bonds each of the denomination of \$1000.00, making a total par value of the sum of \$25,000.00, which bonds are those delivered direct by the Washington Steel & Bolt Company to said bank, are valid and existing obligations of the Washington Steel & Bolt Company as security for the indebtedness of said Washington Steel & Bolt Company to said Bank of Montreal.

7. IT IS FURTHER ORDERED, ADJUDGED and DECREED, for the purpose of apportioning the proceeds of said sale among the Bank of Montreal and the owners of the other bonds, that the said bonds last hereinbefore described shall be estimated at their face value of \$25,000.00 and accrued interest amounting to the sum of \$———.

8. IT IS FURTHER ORDERED, ADJUDGED and DECREED that there is now due and owing from the Washington Steel & Bolt Company to the Bank of Montreal the full and just sum of \$20,000.00, together with the interest thereon at the rate of eight per cent (8%) per annum from the 23d day of December, 1910, making a total to this date of principal and interest of the sum of \$26,033.30, and that the said indebtedness is secured by the bonds hereinbefore mentioned and held to be valid.

9. IT IS FURTHER ORDERED, CONSIDERED and DECREED that J. H. Osborne is the owner of the following bonds of said issue which bonds are upon file as exhibits herein; numbers 410 to 438, each inclusive, being 29 bonds of the denomina-

tion of \$100.00 each, making a total par value of \$2,900.00; bonds numbered 655 [23] to 660, each inclusive, being six bonds of the denomination of \$500.00 each, making a total par value of \$3,000.00, bond numbered 400 of the denomination of \$100.00, bonds numbered 653 and 654 of the denomination of \$500.00 each, making a total par value of \$1100.00, making a grand par value total of \$7,000.00; that interest has been paid on the bonds held by the said Osborne as aforesaid to the first day of March, 1912, and to no later date, and that there is now due and owing to the said Osborne, represented by said bonds, the sum of \$7,000.00, together with interest thereon at the rate of 8% per annum from the first day of March, 1912, making a total to this date of principal and interest of the sum of \$8,446.17.

10. IT IS FURTHER ORDERED, ADJUDGED and DECREED that C. F. Chapin is the owner of the following described bonds of said issue, to wit: Bonds numbered 696 to 698, each inclusive, being three bonds of the denomination of \$500.00 each and representing a total par value of \$1500.00, and bonds numbered 662 and 664, being two bonds of the denomination of \$500.00 each totaling \$1000 and making a grand total of \$2,500.00, that interest on said bonds belonging to the said Chapin has been paid to September 1, 1911, and to no later date, and that there is now due and owing on account of said bonds to the said Chapin from the said Washington Steel & Bolt Company the sum of \$2,500.00, together with interest thereon at the rate of eight per cent (8%) per annum from the first day of September,

1911, making a total due to the said Chapin on this date of the sum of \$3,116.66.

11. IT IS FURTHER ORDERED, CONSIDERED, ADJUDGED and DECREED that Meta McElroy is the owner of the following bonds of said issue, to wit: bond numbered 700 of the par value of \$500.00, bond numbered 706 of the par value of \$1000.00, bonds numbered 439 to 442, each inclusive, being four bonds of the par value of \$100.00 each, making a total of \$400.00, and bond numbered 446 of the par [24] value of \$100.00, making a grand total of \$2,000.00, and that there is now due and owing from the said Washington Steel & Bolt Company to the said Meta McElroy, on account of the execution and delivery of the said bonds, the sum of \$2,000.00, together with the interest thereon at the rate of eight per cent (8%) per annum from the first day of September, 1911, making a total due to the said Meta McElroy on this date of the sum of \$2,493.33.

12. IT IS FURTHER ORDERED, ADJUDGED and DECREED that Thomas S. Burley is the owner of the following bonds of said issue, to wit: bonds numbered 443 to 445, each inclusive, being three bonds of the par value of \$100.00 each, totaling \$300.00 and bonds 498 to 500, each inclusive, being three bonds of the par value of \$100.00 each, totaling \$300.00, and bonds 701 and 717, being two bonds of the par value of \$1000.00 each, totaling \$2,000.00, making a grand total of \$2,600.00 par value, that interest has been paid upon said bonds to the first day of September, 1911, and to no later

date, and that there is now due and owing the said Burley from the said Washington Steel & Bolt Company, on account of the execution and delivery of the said bonds, the sum of \$2,600.00, with interest thereon, at the rate of eight per cent (8%) per annum from the first day of September, 1911, making the sum due at this date of \$3,241.33.

13. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bonds held by the Bank of Montreal, and particularly described in Paragraph 4 hereof, are hereby established as a valid, existing obligation of the said Washington Steel & Bolt Company and secured by that certain trust deed and mortgage hereinbefore held valid, signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the auditor's office of Snohomish County, State of Washington, in Volume 69, of Mortgages, at page 388, Record of Mortgages of said Snohomish County.

14. IT IS FURTHER ORDERED, ADJUDGED and DECREED THAT THE [25] bonds held by the Bank of Montreal, and particularly described in Paragraph 6 hereof, are hereby established as a valid, existing obligation of the said Washington Steel & Bolt Company and secured by that certain trust deed and mortgage hereinbefore held valid, signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the Auditor's office of Snohomish County, State of Washington, in Volume 69 of Mort-

gages, at page 388, Record of Mortgages of said Snohomish County.

15. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bonds held by J. H. Osborne, and particularly described in Paragraph 9 hereof, are hereby established as a valid, existing obligation of the said Washington Steel & Bolt Company and secured by that certain trust deed and mortgage hereinbefore held valid, signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the auditor's office of Snohomish County, State of Washington, in Volume 69 of Mortgages, at page 388, Record of Mortgages of said Snohomish County.

16. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bonds held by C. F. Chapin, and particularly described in Paragraph 10 hereof, are hereby established as a valid, existing obligation of the said Washington Steel & Bolt Company and secured by that certain trust deed and mortgage hereinbefore held valid, signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the Auditor's office of Snohomish County, State of Washington, in Volume 69 of Mortgages, at page 388, Record of Mortgages of said Snohomish County.

17. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bonds held by Meta McElroy, and particularly described in Paragraph 11 hereof, are hereby established as a valid,

existing [26] obligation of the said Washington Steel & Bolt Company and secured by that certain trust deed and mortgage hereinbefore held valid, signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the Auditor's office of Snohomish County, State of Washington, in Volume 69 of Mortgages, at page 388, Record of Mortgages of said Snohomish County.

18a. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bonds held by Thomas S. Burley, and particularly described in Paragraph 12 hereof, are hereby established as a valid, existing obligation of the said Washington Steel & Bolt Company and secured by that certain trust deed and mortgage hereinbefore held valid, signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the Auditor's office of Snohomish County, State of Washington, in Volume 69 of Mortgages, at page 388, Record of Mortgages of said Snohomish County.

18b. IT IS FURTHER ORDERED, CONSIDERED and ADJUDGED that the Trustee must elect whether he will administer the equity of redemption in the property for the benefit of general creditors or surrender the mortgaged property for foreclosure.

If the Court refuses to incorporate 18b in its order, we further, without prejudice to urging our right to have said paragraph inserted, propose the incorporation of the following:

19. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the personal property referred to herein, particularly described as follows, to wit:

One Agax Hot Pressed nut machine 16 ton.

One Acme nut tapper 2.

One Acme nut tapper 1.

One alligator Shear.

One Acme heading and forging machine 1.

One Acme heading and forging machine 2.

One Acme threading machine 2.

One Acme threading machine 1.

One Acme pointing machine.

One 70 H. P. boiler Erie City manufacture.

One 60 H. P. engine.

\$6,000.00 worth of dies, in die houses on below described real estate. One burring machine. Water works, hose, electric light plant. A complete oil pumping station with heaters, double strainer, together with pipings and Rockwell oil burners for boiler, and also one three-ton tumbler. Blacksmithing outfit, such as vises, anvils, emery stands, tongs, hammers, drills, punches, etc. A-1 leather endless belting, and any other belting owned and used by said Washington Steel & Bolt Company in and about its said bolt factory. All pulleys owned by said Washington Steel & Bolt Company used in and about said bolt plant, all of the same being of steel material. All roller bearings for shaftings 120 feet or more long. All office furniture [27] and fixtures, among other things including desk, filing cabinet, typewriter, steam heating apparatus, situate and

being in the office of said company, which said office building is now located upon the above-described real estate.

Two hot blast furnaces. One oil tank, capacity 500 barrels. Platform scales. Also one United States patent known as the Climo Rail Joint Patent, #755848, issued on the 29th of March, 1904, together with all rights and privileges thereto connected or in anywise belonging also one United States Patent, #740257, known as the Owen-Shaw Nut and Bolt Locks, together with all rights and privileges thereto belonging.

And all other personal property of every name and nature now owned and possessed by the Washington Steel & Bolt Company except the cash which is in the hands of the Trustee in Bankruptcy as proceeds of the sale of certain manufactured stock and raw material.

And the real property herein referred to, situated in Snohomish County, State of Washington, and particularly described as follows:

“Beginning at the point of intersection of section line between sections twenty-three (23) and twenty-six (26), Township twenty-seven (27) North, Range Three (3) East of W. M., with the center line of the Great Northern Railroad right-of-way; thence angle west to south 48 degrees 46 minutes (magnetic course south 40 degrees 56 minutes west), along the center line of the Great Northern right of way, 339.5 feet; thence angle right 46 degrees 17 minutes a distance of 69.18 feet to the true place of beginning. Thence same course 395.8 feet. Thence angle

left 64 degrees 25 minutes, 290.58 feet; thence angle left 115 degrees 35 minutes 362.5 feet to the place of beginning, containing 2.004 acres, also all the abutting tide lands in front of the above described premises amounting to about six (6) acres, or about eight (8) acres in all, situated in the County of Snohomish, State of Washington.”

“Beginning at a point on the westerly line of the right of way of the Seattle & Montana Railway Right of Way 952 feet south of the intersection of said Right of Way and the south line of Section Twenty-three (23) Township Twenty-seven (27) North Range Three (3) East and running thence north (250) two hundred fifty feet; thence S. 87 degrees 13' W. to the shore of Puget Sound. Thence southerly along the shore of Puget Sound to a point bearing S. 87 degrees 13' W. of the place of beginning; thence N. 87 degrees 13' E. to the place of beginning, being a strip of land 250 feet in length North and South along said Right of Way and extending to the shore of Puget Sound.

Also all that portion of the tideland Lot No. 1 in front of Section 26, Tp. 27, R. 3 E. in front of the town of Edmonds and more particularly described as follows: The first class tidelands lying in front of the following described upland: Beginning at a point on the westerly line of the right of way of the Seattle and Montana Railway Right of Way 952 feet south of the intersection of said Right of Way and the south line of Sec. 23, Tp. 27, N. R. 3 E. and running thence North 250 feet; thence south 87 degrees 13' W. to the shore of Puget Sound; thence southerly

along the shore of Puget Sound to a point bearing S. 87 degrees 13' W. from the place of beginning, thence N. 87 degrees 13' east to the place of beginning, being a strip of land 250 feet in length north and south along said right of way. Said portion of tideland Lot No. 1 being bounded by the Government Meander Line and the [28] river Harbor line and the N. and S. boundary line of above upland description produced out in the same direction to the river harbor line containing 0.99 acre more or less, according to the official map on file in the office of the Commissioner of Public Lands at Olympia, Washington," and all other real property or interest in real property which the said Washington Steel & Bolt Company owns, be sold by the Trustee in Bankruptcy in accordance with the practice of this Court, and that the proceeds of said sale shall be applied, first to such portion of the expenses in this bankruptcy proceeding as should be paid by the holders of the said bonds, then in payment of the proper charges of said Washington Trust Company, and then to the satisfaction of the bonds held by the Bank of Montreal to the extent of the indebtedness of the Washington Steel & Bolt Company as adjudged herein and to the payment and satisfaction of the bonds held by the said Osborne, Chapin, McElroy and Burley, paying proportionately on all valid bonds.

20. IT IS FURTHER ORDERED, CONSIDERED, ADJUDGED and DECREED that any balance remaining after the application of the proceeds of said sale, as set out in the preceding paragraph, shall be paid to A. McPhaden and A. G. Pike,

according to their respective interests in the bonds held by the Bank of Montreal.

21. IT IS FURTHER ORDERED, CONSIDERED, ADJUDGED and DECREED that any holder or holders of the bonds or coupons secured by this mortgage, according to the terms of this decree, if successful as bidder or bidders at said sale, may, after first paying in enough to cover all proper and lawful charges and demands which may be made by the Trustee, the Washington Trust Company, including its compensation and the compensation of its attorneys, and also paying in such portion of the expenses of this bankruptcy proceeding as should be paid by the holders of said bonds, use such bonds and coupons to apply toward the payment of the purchase money, reckoning and computing the said bonds and coupons at a sum equal to and not exceeding that which would be payable to such bond holder or holders as such out of the net proceeds of such sale if made [29] for cash.

22. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Washington Trust Company may, as trustee for the holders of said bonds, with their consent, after first paying in money sufficient to cover such portion of the expenses of this bankruptcy proceeding as should be paid by the bond holders, become a bidder at said sale and may use, in making settlement for and in payment of the purchase money to account to the Trustee in Bankruptcy, any and all of the bonds or coupons secured by said mortgage and held valid by this decree, and may use and apply the same in

and toward the payment of the purchase money reckoning and computing said bonds and coupons at a sum equal to and not exceeding that which would be payable out of the net proceeds of said sale, were the purchase price paid in cash, to the holders of such used bonds.

23. IT IS FURTHER ORDERED, ADJUDGED and DECREED, inasmuch as the proper portion of the expenses of this bankruptcy proceeding to be paid by the holders of the bonds is not ascertained, or fixed, that all bidders at said sale should be required to pay the sum of \$——— portion of the bid to cover any and all possible proper charges and expenses, and any amount remaining of said sum not used in the payment of proper charges and expenses shall be applied as other parts of the bid are directed to be applied according to the terms of this decree, and in the event that the successful bidder is someone other than the Washington Trust Company and a holder of bonds, such bidder shall pay in, at least, the sum of \$——— in cash to cover the lawful charges, including compensation and compensation of its attorneys, of the said Washington Trust Company.

Done in open court this —— day of October, 1914.

_____,
Judge. [30]

The provisions of the foregoing Order or Decree were, at the time of the signing of the Order herein pertaining to this subject matter, separately presented to the Court, and a separate request was made as to each provision hereof, to have it embodied in

the Order, and that the Court considered separately each of the foregoing provisions and declined to embody each or any thereof in its Decree or Order and the attorney for the Washington Trust Company duly and at the time excepted to the Court's refusal so to do as to each paragraph and provision and excepted to the Court's refusal to embody paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and his exceptions as to each paragraph or provision is hereby allowed.

Done in open court this 16th day of October, 1914.

JEREMIAH NETERER,

Judge. [31]

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

Exhibit "F" [to Petition for Revision—Order Confirming Order of Referee of July 28, 1914, etc.].

**ORDER ON REVIEW FROM REFEREE'S
ORDER.**

This matter having been brought before the referee upon the petition of the Trustee for leave to sell the property of the bankrupt estate free and clear from the mortgage thereon; and the referee having made and entered an order on the 28th day of July, 1914, granting leave to the Trustee to so sell said property free and clear; and the Washington Trust

Company having taken a review from said order to this court; and the matters raised by said review having been heard and considered by this court,

IT IS ORDERED that said order of the referee be, and the same is, hereby confirmed.

And it is hereby further ORDERED that no bid for said property be accepted until its acceptance is authorized by this court.

Oct. 16, 1914.

JEREMIAH NETERER,

Judge. [32]

In the District Court of the United States in and for the Western District of Washington, Northern Division.

No. —.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

Exhibit "G" [to Petition for Revision—Exceptions of Washington Trust Co. to Order Confirming Order of Referee Re Sale of Property, etc.].

EXCEPTIONS.

COMES NOW the Washington Trust Company, as Trustee, and hereby excepts to the Order entered by the above-entitled court this day wherein said court confirmed the Order of the Referee directing a sale of the property involved in the above-entitled proceeding, and further excepts to the whole and every part of said Order.

(Signed) JAMES B. MURPHY,
Attorney for Washington Trust Company.

The foregoing Exception was duly presented and taken at that time of the signing of the Order herein referred to, and the exceptions allowed.

Dated this 16th day of October, 1914.

(Signed) JEREMIAH NETERER,
Judge. [33]

*In the United States Circuit Court of Appeals, Ninth
District.*

No. 2512.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

Notice to Respondent on Revision.

To EDWARD H. CHAVELLE, as Trustee of the
Estate of the Above Bankrupt, and to J. W.
RUSSELL, Attorney for the Said Trustee:

Please take notice that a petition for Supervision & Revision of the orders, judgments and proceedings rendered and had in the above-entitled cause and referred to in said petition, a copy of which is served on you herewith, has been filed and docketed in the United States Circuit Court of Appeals for the Ninth Circuit as cause No. 2512 and that you are required to answer, demur, plead, or move to dismiss the same within 30 days from the date of this Notice, or, in case of your default, the same may be granted and a mandate issued accordingly.

Dated this 24th day of November, 1914.

JAMES B. MURPHY,
Attorney for Petitioner, the Washington Trust Com-
pany.

I hereby acknowledge service of the above Notice,
together with a copy of the petition referred to
therein this 24 day of November, 1914.

J. W. RUSSELL,
Attorney for Respondent, Trustee. [34]

[Endorsed]: No. 2512. In the United States Cir-
cuit Court of Appeals, Ninth District. In the
Matter of Washington Steel & Bolt Co., a Corpora-
tion, Bankrupt. Notice of Petition for Supervision
and Revision. Filed Dec. 1, 1914. F. D. Monckton,
Clerk.

[Endorsed]: No. 2512. United States Circuit
Court of Appeals for the Ninth Circuit. The Wash-
ington Trust Company, Petitioner, vs. Edward H.
Chavelle, as Trustee of the Estate of Washington
Steel & Bolt Company, a Corporation, Bankrupt, Re-
spondent. Petition for Revision Under Section 24b
of the Bankruptcy Act of Congress, Approved July
1, 1898, to Revise, in Matter of Law, of Certain
Orders of the United States District Court for the
Western District of Washington, Northern Division.
Filed November 4, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.